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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

**RECEIVED**  
JUL 14 1997  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Rulemaking to Amend Parts 1, 2, 21, and 25	)	CC Docket No. 92-297
Of the Commission's Rules to Redesignate	)	
The 27.5-29.5 GHz Frequency Band, To	)	
Reallocate the 29.5-30.0 GHz Frequency	)	
Band, To Establish Rules and Policies for	)	
Local Multipoint Distribution Service	)	
And for Fixed Satellite Services	)	

**REPLY OF WEBCEL COMMUNICATIONS, INC.**

WebCel Communications, Inc. ("WebCel"), by its attorneys and pursuant to Sections 1.429 and 1.4(b)(1) of the Commission's rules, hereby replies to the oppositions to its petition for partial reconsideration of the *Second Report and Order* in the above-captioned docket.<sup>1</sup>

**INTRODUCTION**

The only substantive opposition to WebCel's request that the Commission reconsider its rejection of a "very small business" category is based on a concern that in doing so the Commission not reduce incentives for firms in the existing small business category. Otherwise, there is no real objection to WebCel's Petition. Instead, the omission of a very small businesses category is based on a faulty assumption and only a passing reference in the *Second Report and Order*, that LMDS involves huge capital requirements unsuitable for small, start-up entrepreneurs. Yet the record shows that LMDS is a scaleable, geographically local service, perfectly suited to entrepreneurial and early-stage companies. Because such start-up firms have a far higher cost of capital than the highly

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<sup>1</sup>*Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking*, in CC Docket No. 92-297 (rel Mar. 13, 1997). ("Second Report and Order").

capitalized \$40-70 million annual revenue companies who would qualify for bidding credits under the Order, the Commission, as it has in previous spectrum auctions and as it proposes for future auctions, should *expand* these preferences by adding additional credits for very small businesses.

The opposition to WebCel's requests that the Commission reconsider its decisions allowing RBOCs and cable systems -- who are ineligible to hold in-region LMDS licenses -- to participate in such in-region auctions comes from only a small handful of these monopolists. Bell Atlantic's rhetoric aside, the Commission must harmonize the substantive eligibility restrictions with its proposed rule allowing ineligible parties to bid for in-region LMDS licenses in the auctions. No RBOC or cable system, including the rural telcos opposing WebCel's Petition, has shown there is any conceivable public purpose for having them bid at auction for spectrum licenses they are disqualified from holding. This rule, along with the ownership attribution standard, should be clarified to protect the same competitive interests underlying the eligibility limitation in the first instance.

## **DISCUSSION**

### **I. THE LMDS DESIGNATED ENTITY RULES SHOULD INCLUDE, AS IN PAST AND UPCOMING AUCTIONS, A VERY SMALL BUSINESS CATEGORY**

The *Second Report and Order* established two separate categories for designated entities, each based on the annual average revenue of the applicant over the preceding three years.<sup>2</sup> The LMDS rules, however, excluded a category for very small businesses, in contrast to most recent and upcoming auctions.

As WebCel demonstrated in its Petition, the omission of a separate category for very small businesses combined with the Commission's rejection of an asset test for bidding credits means that

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<sup>2</sup> The first is for firms with average annual revenue of between \$40 million and \$75 million. The second category is for "small businesses" with average annual revenue that do not exceed \$40 million. *See Id.* ¶ 348.

large, asset-rich firms with relatively low revenues will be in the same designated entity category as true start-ups, like WebCel.<sup>3</sup> No party opposed WebCel's proposal that the Commission add supplemental preferences for very small businesses, as it has in the past, although CellularVision USA, Inc. ("Cellular Vision") urged the Commission not to reduce the current incentives for businesses in the \$40 million to \$75 million revenue category.<sup>4</sup> On the merits, several parties suggest that "LMDS will be a capital intensive service" whose auction prices could rival those from the PCS C block.<sup>5</sup> The Commission's omission of a "very small business" category for LMDS in the *Second Report and Order* was also premised on one brief passing observation that "substantial capital will be required to acquire and construct LMDS systems" and presumably therefore preferences should be provided to firms in a single small business category beyond \$40 million in revenues.<sup>6</sup> To the contrary, the record demonstrates that small firms are extremely well-suited for LMDS.

The scalability of LMDS, the ability to match investment with revenue, and the lack of any commercial or regulatory requirement for wide-area or multiple -market geographic coverage, make LMDS a unique wireless service perfectly structured for small scale, incremental entry.<sup>7</sup> For example, Montgomery Securities, a major investment firm, concludes in a recent report that LMDS's "'scaleable' nature, the ability to build out large cells at first, and shrink them as the subscriber base (business or residential) grows, makes it a compelling option for competitive access

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<sup>3</sup> These include, for example, Associated (with 1996 assets valued at \$518 million), NextWave (\$4.9 billion), and Omnipoint (\$1.4 billion). Current 1997 values are higher. See WebCel Petition at 7.

<sup>4</sup> CellularVision Opposition at 9-10; Rural Telecommunications Group ("RTG") Opposition at 7 (supporting inclusion of very small business category).

<sup>5</sup> *Id.* at 4-5.

<sup>6</sup> *Second Report and Order* ¶ 348. No other analysis supported this conclusion by the Commission.

<sup>7</sup> In an ex parte meeting with officials of the Wireless Telecommunications Bureau on July 8, WebCel was asked to provide information on the capital outlay required for LMDS service and supporting its assertion that LMDS is suitable for small entrepreneurs. Information provided in this section is in response to that request.

providers wishing to *establish a presence* in broadband service delivery.”<sup>8</sup> Indeed, CellularVision itself in its most recent quarterly filing to the Securities and Exchange Commission (“SEC”) supports WebCel’s position, stating that:

The Company is able to control the timing of deployment of capital resources based on the variable cost nature of the business and the incremental fixed cost per transmitter site constructed. Should capital conservation measures be required, the Company may slow the rate of subscriber growth or delay additional transmitter deployment.<sup>9</sup>

Thus, other than its preconceived notions on LMDS auction prices, CellularVision seems to agree on the inherent scalability of LMDS.

In addition, a recent ex parte filing with the Commission by the National Venture Capital Association (NVCA), likewise confirms WebCel’s conclusions, noting that “because [LMDS] is a stationary service, cell sites and network infrastructure can be deployed gradually to match revenue generation.”<sup>10</sup> NVCA also notes that nationwide roaming and national branding is not essential to LMDS success. Consequently, “qualified entrepreneurs and very small businesses can be successful with only one or a few” BTAs, and “LMDS may well turn out to be one of the best new venture opportunities for locally-owned, small businesses and entrepreneurial start-ups.”<sup>11</sup>

Anecdotal evidence also supports these views. In its quarterly submission, CellularVision reports a gross investment in plant and equipment for its New York system of approximately \$17 million. Currently, 12 cells are in operation with a target of 17 by year’s end. In contrast, Omnipoint, holder of a 30 MHz PCS license for the New York MTA, as of December 31, 1996, has already expended almost \$100 million for *initial* network infrastructure and other equipment in the

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<sup>8</sup> See Montgomery Securities. Trends and Technologies in Personal and Wireless Local Loop Communications. Vol. 27 (Emphasis supplied).

<sup>9</sup> CellularVision 10-Q filing. May 15, 1997.

<sup>10</sup> See Letter from Daniel T. Kingsley, Executive Director, NVCA to Reed Hundt (July 7, 1997) at 1 (“NVCA Letter”) attached hereto as Exhibit A. NVCA represents over 240 professional venture capital firms that control over 80 percent of venture capital dollars invested annually.

New York metropolitan area.<sup>12</sup> While there are significant differences between CellularVision's New York PMSA territory and Omnipoint's MTA, it has been reported that Omnipoint has already built out in excess of 300 cells in the New York metropolitan area. The sheer magnitude of these discrepancies is indicative of the essential distinction between LMDS and mobile wireless services – the scalability in the former and the need to build out an entire market in the latter.<sup>13</sup>

These differences are even more important in smaller population BTAs. Smaller and more rural BTAs are characterized by much lower population density and, in general, large geographic areas. For mobile services, population centers must be covered as well as major highways leading into and out of the BTA. Consequently, more often than not, one or two cells can cover the majority of the population, but numerous cells must be constructed to cover the roads. This highway coverage is of immediate, paramount importance to the system operator since a large percentage of revenue is derived from out of area customers "roaming" on the system. In contrast, LMDS, because it is a fixed service, has absolutely no need to build infrastructure where there are neither businesses or residences.<sup>14</sup> In sum, of all the auctions the Commission has conducted to date, this may be the best opportunity for small business and entrepreneurial start-ups, especially in secondary and tertiary markets.<sup>15</sup>

As shown in its Petition and as reflected in the financial analysis attached as Exhibit B, hereto, start-up ventures like WebCel, with relatively low asset value, have a fundamentally

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<sup>11</sup> *Id.*

<sup>12</sup> Omnipoint 10-Q filing, May 15, 1997 (reporting additional expenditures of \$78.3 million for 3 month period ending March 31, for increase in infrastructure-related items).

<sup>13</sup> NVCA Letter at 1 (investment required for LMDS is in direct contrast to that required for mobile PCS services, "where service requirements may necessitate national service area 'footprints,' national branding, and considerable up-front capital spending for large geographic build-out").

<sup>14</sup> For example, the Sante Fe, New Mexico BTA has a population of approximately 190,000 and a geographic area over 10,000 square miles. An LMDS system can serve the vast majority of the population with a few cells in Sante Fe and other small towns. A mobile system, in contrast, will require construction of the same cells and maybe dozens more to cover the highways.

different, and significantly higher weighed average cost of capital than a set of asset-rich likely bidders, who may, nonetheless have relatively small annualized revenues.<sup>16</sup> As a result, in the absence of a separate category for “very small businesses,” start-up ventures seeking to compete for licenses in the LMDS auction will continue to be fundamentally disadvantaged on a cost of capital basis *vis-à-vis* other, established communications firms which meet the *Second Report and Order*’s revenue test for “small businesses,” but in reality are anything but small. It is precisely this lack of distinction between entrepreneurs and other firms that will disadvantage true, very small businesses.

As WebCel noted in its Petition, the tiered approach to preferences for small and very small businesses was successfully used by the Commission in numerous recent auctions.<sup>17</sup> In addition, in its recently released *Competitive Bidding Proceeding Order and Notice*, the Commission proposed *a number of categories for small businesses, each having unique preferences*. According to the Commission, its proposal was based on the plans adopted in the most recent auctions, and “relying on our past auction experience, we believe these plans are appropriate.”<sup>18</sup> Given the suitability of LMDS to small, entrepreneurial ventures, there is no basis here for *not* including at least one category for very small business.<sup>19</sup> Entrepreneurs on a local, market-by market basis can and will succeed, so long as the Commission follows the mandates of Congress by providing designated entity preferences that truly level the cost of capital playing field.

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<sup>15</sup> *Id.*

<sup>16</sup> Specifically, the cost of capital of a firm with fair market value of \$4 million is nearly 4 percentage points higher than a firm with a fair market value of \$135 million, and 6 percentage points higher than one with a fair market value of \$1.3 billion. *See Exhibit B, hereto.*

<sup>17</sup> WebCel Petition at 5.

<sup>18</sup> *Order, Memorandum Opinion and Order and Notice of Proposed Rulemaking, Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Proceeding*, WT Docket No. 97-82, ¶ 36 (rel. Feb. 28, 1997).

<sup>19</sup> In addition, as urged by WebCel in its Petition at 11, the Commission should again adopt a financial eligibility threshold or asset test on designated entity status.

## II. OTHER ASPECTS OF THE LMDS RULES WARRANT RECONSIDERATION

### A. LECs And Cable Operators, Including Rural Telcos, Should Be Barred From Bidding For In-Region LMDS Licenses

Bell Atlantic opposes WebCel's request that the Commission reconsider its decision to allow incumbent LECs and cable operators to participate in LMDS auctions for in-region licenses and later partition overlapping portions. Incumbent monopolists, like Bell Atlantic, have clear incentives to game the auction process in order to foreclose entry from competitive LMDS operators, and can easily pursue strategies in the auction room and after the auction's conclusion to ensure that LMDS competition to their monopoly operations will never materialize. Bell Atlantic never seriously denies or refutes WebCel's concerns, which form the basis for the eligibility rule itself. Instead, Bell Atlantic trots out a number of make-weight arguments that in no way address or diminish the absurdity of allowing monopoly incumbents to bid on in-region licenses in the face of overwhelming record support for an eligibility restriction that prohibits incumbent LECs and cable operators from holding LMDS licenses that overlap with their monopoly facilities.<sup>20</sup> *First*, contrary to Bell Atlantic's assertions the Commission's current auction rules do nothing to blunt the incentives of incumbent monopolists to drive up auction prices to exclude new entrants.<sup>21</sup> *Second*, it would make no sense to allow incumbent monopolists to engage in the myriad foreclosure strategies they could pursue in the auction room and hope such conduct can be addressed through ex

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<sup>20</sup> Indeed, Bell Atlantic fails to address why the purchase of geographically partitioned spectrum covering non-overlapping areas in the auction aftermarket would be inadequate to support any *legitimate* entry strategies it might have. See WebCel Petition at 16-17. In chiding as "ludicrous" WebCel's suggestion that incumbents be permitted to participate in in-region BTA's by divesting overlapping facilities in advance of the auction (See Bell Atlantic Opposition at 16; see also RTG Opposition at 5), Bell Atlantic also ignores the alternative proposed by WebCel – that such facilities be divested by a date certain after the auction's completion, an approach successfully adopted by the Commission in the DBS auction to address similar concerns. See WebCel Petition at 16.

<sup>21</sup> As the Commission found in supporting the need for an eligibility restriction "a dominant firm has the incentive to expend resources to perpetuate the status quo. Thus incumbents are likely to be high bidders for LMDS licenses." See *Second Report and Order*, ¶ 173. Moreover, nothing in the Commission's rules would prevent incumbent monopolists from delaying commercialization of a competitive LMDS service. See WebCel Petition at 14-15.

post enforcement of the antitrust laws or the Commission's rules.<sup>22</sup> *Third*, the exclusion of incumbent LECs and cable operators from bidding on in-region LMDS licenses is essential to promoting a robust, competitive market for LMDS.<sup>23</sup>

The Commission should also reject RTG's request that any bidding restriction on incumbents not be extended to rural telephone interests. RTG adduces nothing, beyond rhetoric, to rebut the proposition that rural LECs have the same incentive and ability as non-rural interests to use the auction process to foreclose entry by competitive LMDS providers. Moreover, as the Commission already found,<sup>24</sup> the availability of the 150 MHz block and the ability to acquire 1150 MHz block that do not overlap with LEC service territories satisfies the requirements of Section 309(j)(4)(d).

**B. LEC and Cable Ownership Interests In LMDS Licensees of 10 Percent or Greater Should Constitute an Attributable Interest**

Bell Atlantic also challenges WebCel's request that the Commission find that an ownership interest of 10 percent or greater is attributable in place of the 20 percent rule the Commission adopted. Bell Atlantic in no way rebuts WebCel's main concern that the 20 percent rule simply cannot be reconciled with the competitive risks arising from incumbent LEC and cable operator ownership of LMDS licenses covering their service areas.<sup>25</sup> At bottom, Bell Atlantic offers no

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<sup>22</sup> As the Commission found, given the competitive concerns, "it is preferable to impose eligibility restrictions rather than to rely on ex post remedies." *Second Report and Order* ¶ 177.

<sup>23</sup> Nothing in the *Second Report and Order* suggests, as Bell Atlantic argues, that "LMDS will benefit" from the participation of incumbents in LMDS service covering their service territories. Quite to the contrary, the Commission has made clear in the strongest possible terms that "LECs and cable companies *should be barred* from acquiring in-region 1,150 megahertz LMDS licenses" until they face sufficient facilities-based competition and no longer have substantial market power. *Id.* ¶ 169 (Emphasis supplied).

<sup>24</sup> *Id.* ¶ 180.

<sup>25</sup> See WebCel Petition at 19. Instead, Bell Atlantic makes two arguments that totally miss the point. First, it asserts that one of those concerns -- that incumbents can circumvent the rule by putting together a relatively small consortia of five partners that can engage in the same anticompetitive auction tactics and spectrum warehousing the eligibility rule is designed to prevent -- are already proscribed by Commission rules. Yet, Bell Atlantic neither denies that such conduct is likely, or questions that it is competitively dangerous. Moreover, as discussed above, given the serious competitive concerns from LEC acquisition of in-region LMDS licenses, ex post remedies are no answer. Bell Atlantic also



support whatsoever for the Commission's rejection of its tentative conclusion in the *Fourth Notice* - a conclusion overwhelmingly supported by the comments and one that is consistent with the Telecommunications Act of 1996<sup>26</sup> -- to adopt a far more competitively prudent rule that would attribute ownership interests of incumbents of 10 percent or more.

**C. Warrants and Similar Convertible Interests Must be Treated as Exercised for Purposes of the Eligibility Rule**

As with its other hyperbole, Bell Atlantic's challenge to WebCel's request that warrants and similar convertible instruments be treated as exercised for purposes of the eligibility restriction, fails to meet the substance of WebCel's Petition.<sup>27</sup> While Bell Atlantic claims that there is no record evidence supporting attribution of warrants and similar convertible instruments, *the Commission expressly found in deciding to attribute convertible instruments in its designated entity attribution rules that convertible securities "are generally considered to have a present effect on the power to control the concern."*<sup>28</sup> Given this finding, regardless of what the Commission may have done with respect to other eligibility rules raising competitive concerns, there is no reasonable basis for failing to attribute convertible instruments for purposes of the LMDS eligibility rules. As WebCel demonstrated in its Petition, and as Bell Atlantic fails to address, to the extent incumbent LECs and

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questions WebCel's assertion that distinctions between LMDS and CMRS requires a separate attribution rule for LMDS, at the same time WebCel argues that similarities between LMDS and certain CMRS services requires adoption of a very small business designated entity category. As discussed above, similarities between various CMRS services and LMDS in terms of the capital requirements of each, suggest that the Commission adopt a similar very small business designated entity category for LMDS as it has adopted for a number of CMRS services. On the other hand, the *competitive* characteristics of CMRS markets as contrasted to *monopoly* local telephone markets, suggests that it would be inappropriate to rely on the more lenient CMRS attribution rule for determining the permissible level of LEC and cable investment in LMDS licensees.

<sup>26</sup> *First Report and Order and Fourth Notice of Proposed Rulemaking*, CC Docket No. 92-297, ¶ 133, (rel. July 22, 1996) (10 percent attribution standard tracks section of 1996 Act prohibiting incumbent LECs and cable operators from acquiring attributable interests in each other, which "has the same goals as [the FCC] in this proceeding."); *see also* 47 U.S.C. § 153(1)(defining ownership and affiliate to mean an interest of 10 percent or greater).

<sup>27</sup> Bell Atlantic's argument that WebCel cannot seek reconsideration of the Commission's attribution on warrants because WebCel did not comment on the question, finds no support on the provision of the Commission's rules it cites. That provision says nothing about whether a petitioner may seek reconsideration on an issue that it did not address in its comments.

cable operators can freely hold convertible instruments in LMDS licensees, the pro-competitive purpose of the eligibility rule can be largely frustrated.

### CONCLUSION

For the foregoing reasons, the Oppositions to WebCel's Petition should be denied.

Respectfully submitted,

**WEBCEL COMMUNICATIONS, INC.**

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Dated: July 14, 1997

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<sup>28</sup> See 47 C.F.R. § 1112(d)(5). WebCel Petition at 22.

## ***Exhibit A***

The Capital Asset Pricing Model ("CAPM") is the generally accepted tool used to estimate an appropriate equity discount rate. Application of the model requires consideration be given to: (1) "risk-free" interest rates available in the marketplace (such as those of U.S. Government and high-grade corporate bonds) as of the valuation date; (2) the returns on publically-traded stocks; (3) the relative risks associated with the stock of the subject company (including consideration of the industry in which it operates), relative to the overall stock market, as measured by Beta (" $\beta$ ") and (4) an additional premium for "small" stocks if appropriate.

Jay B. Abrams, in the August 1994 edition of *Valuation*<sup>1</sup>, the Journal of the American Society of Appraisers, develops a table of implied equity premiums ranked by the marketable majority fair market value of the firm in question. The work has three attractive features: (1) It is based empirical data in Ibbotson Associates Yearbooks (the generally accepted reference source for historical equity returns); (2) it eliminates the need to use CAPM since equity premiums are calculated based upon historical equity returns relative to fair market value and; (3) equity premiums are developed for companies whose fair market value is as low as one dollar.

Mr. Abrams suggests that his "... Table of Equity Premiums is three times more accurate than CAPM for NYSE firms, it is far more accurate than CAPM for smaller firms, as CAPM gives us no clue as to the magnitude of sub-NYSE small firm premia." [emphasis supplied]. It should be noted that the utilization of this technique is an iterative process. If performing a discounted cash flow analysis, one must estimate the ultimate marketable majority fair market value of the firm and choose the appropriate equity premium, perform the analysis using the indicated discount rate, and then confirm that the calculated marketable majority fair market value remains within the specified equity premium range.

In this instance, we are only concerned with the cost of capital differences between various sizes of firms. Using the equity premiums developed by Abrams in conjunction with a risk-free rate of 5%, we derive the historical return of equity for various sized firms based upon their marketable majority fair market value. Rates on debt are presumed to pivot about a prime rate, *i.e.*, the rate charge by commercial banks to their best corporate customers, of 8.75%. Assuming a 1:1 debt to equity ratio without any adjustment for tax shielding, the weighted average cost of capital for various-sized firms based upon their marketable majority fair market value is calculated. These calculations are shown on Table 1. While interest rates changes will affect all firms' weighted average cost of capital, dramatically higher interest rates will effect smaller firms disproportionately due to increased financial risk and capital rationing on the part of lenders.

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<sup>1</sup> Abrams, Jay B. August 1994. *Valuation*. American Society of Appraisers, Vol. 39, Number II. Washington, DC. pg 14.

# Table 1

## Cost of Capital

Marketable Majority Fair Market Value /1	Equity & Risk Free Rates /2	Equity Rate /1	Debt Rate	WACC / 3,4	Cost of Capital Advantage	
					Incremental	Cumulative
\$4,050,000	24.40%	19.38%	11.75%	15.73%		
\$6,750,000	23.60%	18.58%	10.75%	15.03%	0.70%	0.70%
\$13,500,000	22.40%	17.38%	10.25%	14.28%	0.75%	1.45%
\$67,500,000	19.80%	14.78%	9.75%	12.83%	1.45%	2.90%
\$135,000,000	18.70%	13.68%	8.75%	11.98%	0.85%	3.75%
\$1,350,000,000	14.90%	9.88%	7.85%	9.81%	2.17%	5.92%
\$13,500,000,000	11.10%	6.08%	7.35%	7.76%	2.05%	7.97%

### Notes:

1. Abrams, Jay B. Valuation. American Society of Appraisers. Volume 39, No. 2, pg. 14
2. Assumes a risk free rate of 5% based upon the historical return on U.S Treasury bonds.
3. Weighted Average Cost of Capital.
4. Assumes a 1:1 debt to equity ratio.

**NATIONAL VENTURE CAPITAL ASSOCIATION**

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***Exhibit B***

July 7, 1997

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

Re: Need for LMDS Very Small Business Category & Asset Test

Dear Chairman Hundt:

On behalf of the National Venture Capital Association ("NVCA"), I am writing to express our opinion about certain spectrum auction provisions in the Rules for Designated Entities recently adopted for the Local Multi-Point Distribution Service ("LMDS").

The National Venture Capital Association consists of over 240 professional venture capital firms which invest over eighty percent of the professional venture capital each year in America's emerging companies. In 1996 over \$10 billion in venture capital was invested in U.S. based companies, the vast majority of which are in the information technology and life sciences fields. In fact, in the communications and networking sector of the information technology field, \$2.5 billion was invested. This subset of information technology includes areas such as modems, computer networking, fiberoptics, pocket paging, teleconferencing, broadcasting, telephone equipment and cellular phones. It is a tremendously important sector of venture capital investment. It is for this reason that we submit the following statement.

LMDS may well turn out to be one of the best new venture opportunities for locally-owned small businesses and entrepreneurial start-ups to enter the telecommunications industry. Since nationwide roaming is not required, and since national branding is not essential for success in each local marketplace, we believe qualified entrepreneurs and very small businesses can be successful with only one or a few Basic Trading Area licenses. Because it is a stationary service, cell sites and network infrastructure can be deployed gradually to match revenue generation. Consequently, the initial capital-raising requirement for such an entrepreneurial undertaking, in one or a few markets, is not formidable. This is in clear contrast to the inherently mobile Personal Communications Service ("PCS"), where service requirements may necessitate national service area "footprints," national branding, and considerable up-front capital spending for large geographic build out before customer acquisition can ever begin.

It is our understanding that the FCC last requested formal public comment on Designated Entity (DE) issues for LMDS, including bidding preferences and repayment terms, in July of 1995 in the Third Notice of Proposed Rulemaking. In the nearly two years since that Notice, both the government and the capital markets have acquired much new learning as a result of the PCS C-Block's aggressive bidding assumptions and perceived overpayment, and the F-Block's later contrasting success. To our knowledge, every auction with DE participation has included a Very Small Business Category (or something close to it) except, interestingly, in the troubled C-Block itself. Other upcoming auctions, such as the 220 MHz block expected later this year, already have a Very Small Business Category established.

The NVCA writes to ask the FCC to consider implementing the schedule of bidding credits and payment terms consistent with the Order, Memorandum Opinion and Order and Notice of Proposed Rulemaking in the matter of Amendment of Part 1 of the Commission's Rules - Competitive Bidding, released February 28th, 1997. (See WT Docket Number 97-82, pages 19-26). It appears that some of the provisions considered in the aforementioned Order were used in crafting the "small business" categories, bidding credits, and preferential payment plans for LMDS. However, the final LMDS Rules omit important provisions for very small businesses and the unique cost-of-capital burdens that true entrepreneurs face.

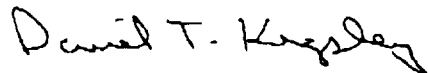
Put another way, the small business category now in the LMDS Order lumps true start-up entrepreneurial businesses with much larger, already well-capitalized companies. Some of these companies already hold billions of dollars worth of other spectrum and are eligible to bid on LMDS at the most favorable preference terms. Thus, the current small business category does not achieve the result mandated by Congress: to level the playing field and eliminate the critical cost-of-capital barriers for entrepreneurs. We fear that truly entrepreneurial enterprises with excellent, differentiated business plans and adequate venture financing, who otherwise would succeed in building local LMDS businesses, will be eclipsed at auction by much larger entities that currently qualify for the same co-mingled level of preference.

We also write to encourage the Commission to include some form of asset test, at least at the \$500 million level used by the FCC in other auctions. An asset test would help to ensure that only bona-fide new ventures, not established players, qualify for the highest economic preferences. Moreover, by restricting the ability of larger established companies to qualify for the most preferential Designated Entity status, it is more likely that Congress' directive, that entrepreneurs and very small businesses be given a fair chance to compete in spectrum-based telecommunications and media enterprises, will be faithfully executed.

One final note is that the LMDS Order does not impose traditional build out requirements. We believe that by getting LMDS licenses into the hands of true entrepreneurs who are the most likely to build out and not hold (i.e. warehouse) spectrum, the FCC will meet Congressional intent to facilitate the entrance of new competitors into local telecommunications.

The LMDS service holds much promise to increase local competition and to create new jobs. We believe that the recommendations proposed herein will help to ensure that small businesses and entrepreneurs will be part of the process.

Sincerely,

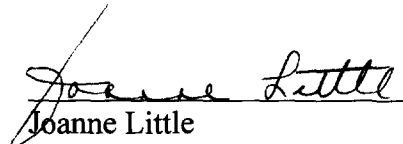
A handwritten signature in cursive script that reads "Daniel T. Kingsley".

Daniel T. Kingsley  
Executive Director

Cc: Hon. Rachelle B. Chong  
Hon. Susan B. Ness  
Hon. James H. Quello  
Mr. William Kennard, General Counsel  
Mr. Daniel Python, Wireless Bureau Chief  
Ms. Rosalind K. Allen, Wireless Bureau  
Mr. John Cimko, Wireless Bureau, Policy Division  
Ms. Catherine Sandoval, Office of Communications Business Opportunites

## CERTIFICATE OF SERVICE

This is to certify that on this 14th day of July, 1997, a copy of the foregoing Reply of WebCel Communications, Inc. was served, by first class mail on the persons listed in the attached service list:

  
Joanne Little

\* Served by hand



Chairman Reed Hundt\*  
Federal Communications Commission  
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Commissioner Susan Ness\*  
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